

United States  
Circuit Court of Appeals

For the Ninth Circuit. 17

---

ROSE PACKARD SHYVERS,

Appellant,

vs.

THE SECURITY-FIRST NATIONAL  
BANK OF LOS ANGELES,

Appellee.

---

Transcript of Record

---

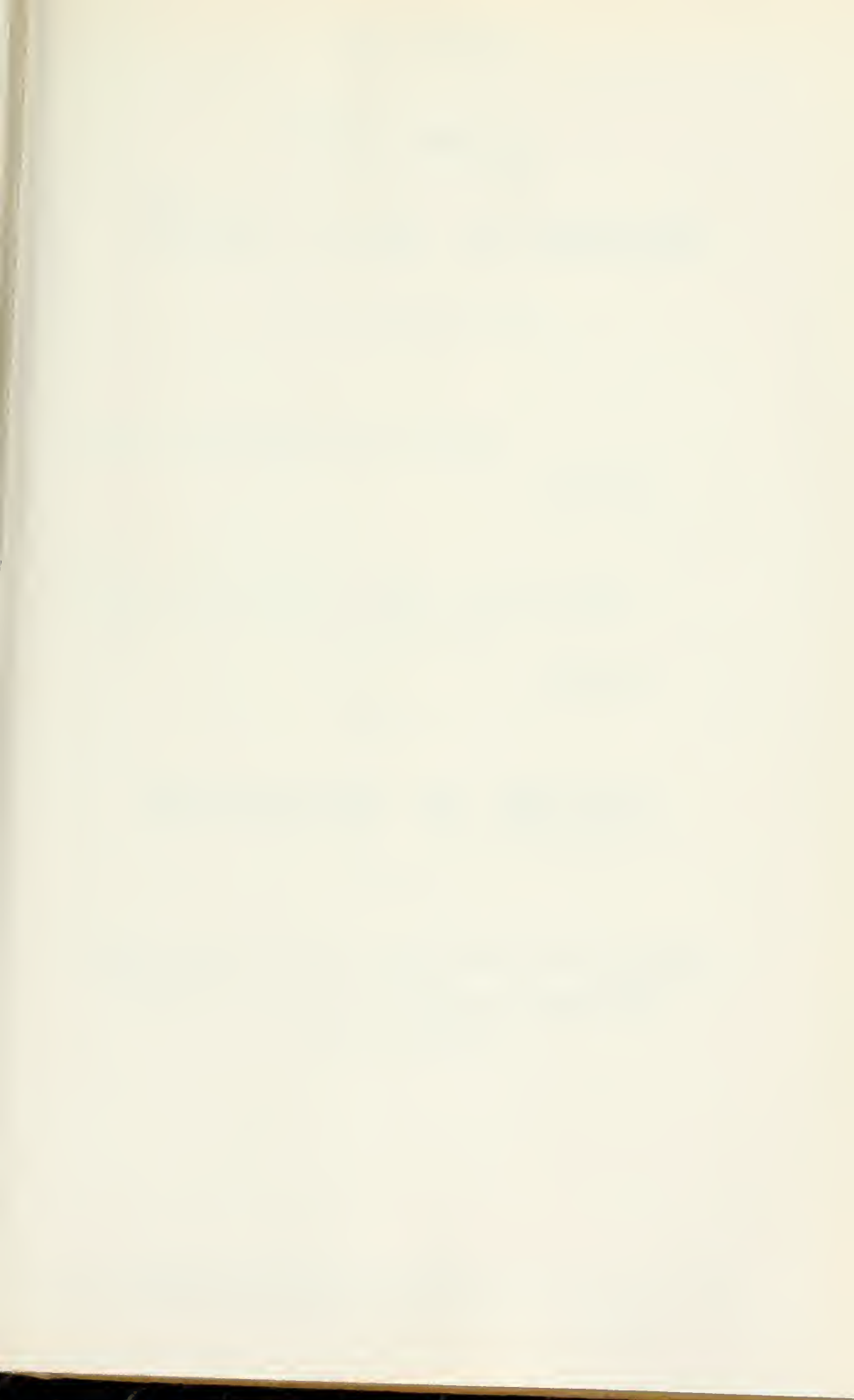
Upon Appeal from the District Court of the United  
States for the Southern District of California,  
Central Division. FILED

MAY 3 - 1933

PAUL P. O'BRIEN,

CLERK







United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

ROSE PACKARD SHYVERS,

Appellant,

vs.

THE SECURITY-FIRST NATIONAL  
BANK OF LOS ANGELES,

Appellee.

---

Transcript of Record

---

Upon Appeal from the District Court of the United  
States for the Southern District of California,  
Central Division.

STATE OF NEW YORK  
IN SENATE  
January 10, 1911.

REPORT  
OF THE  
COMMISSIONERS OF THE LAND OFFICE  
IN RESPONSE TO A RESOLUTION  
PASSED BY THE SENATE  
MAY 11, 1909.

ALBANY:  
J. B. LIPPINCOTT COMPANY, PRINTERS,  
1911.

ALBANY: J. B. LIPPINCOTT COMPANY, PRINTERS, 1911.

# INDEX

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Attorneys, Names and Addresses of.....	1
Appeal:	
Cost Bond on.....	45
Order Allowing.....	43
Petition for.....	42
Statement of Points on.....	56
Notice of.....	45
Approval of Debtor's Petition.....	10
Assignments of Error.....	44
Bond for Costs on Appeal.....	45
Clerk's Certificate.....	54
Citation .....	1
Designation Amended, (Debtor's—District Court) .....	51
Designation, Appellant's, as to record on appeal, (Circuit Court of Appeals).....	56
Judgment of the Court.....	30
Motion, Notice of, for Dismissal of Proceedings	27
Order of Reference.....	29
Names and Addresses of Attorneys.....	1
Narrative of Proceedings had before Conciliation Commissioner.....	32
Proof of Claim of Secured Creditor.....	32

	Page
Notice of Appeal.....	45
Opinion and Order of the Court.....	30
Order Allowing Appeal and Staying Proceedings .....	43
Order Approving Petition & Referring to Conciliation Commissioner.....	10
Order Modifying Stay.....	48
Order Referring to Conciliation Commission	10, 29
Petition, Debtor's, by her attorney, under Sec. 75 Bkey Act.....	3
Schedules of Debts and Assets.....	7
Petition, Debtor's, under Sec. 75 Bkey Act.....	11
Schedules of Debts and Assets.....	15
Petition for Appeal.....	42
Proof of Claim of Secured Creditor.....	32
Restraining Order.....	43
Schedules of Debts and Assets.....	7, 15
Statement of Points to be relied upon on Appeal (Circuit Court of Appeals).....	56
Testimony (Narrative of Proceedings).....	32



# NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

RAYMOND R. HAILS, Esq.,  
JOHN A. JORGENSEN, Esq.,  
412 West 6th Street,  
Los Angeles, California.

For Appellee:

ROANE THORPE, Esq.,  
THORPE & BRIDGES, Esqs.,  
1114 Pacific Southwest Bldg.,  
Los Angeles, California. [1\*]

---

United States Circuit Court of Appeals for the  
Ninth Circuit.

No. ....

ROSE PACKARD SHYVERS,

Appellant,

vs.

SECURITY-FIRST NATIONAL BANK  
OF LOS ANGELES,

Appellee.

## CITATION

United States of America—ss.

To the Security-First National Bank of Los Angeles, greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals

---

\*Page numbering appearing at the foot of page of original certified Transcript of Record.

for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 13th day of March, A. D., 1939, pursuant to an order allowing appeal filed on February 8, 1939, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause No. 32930-J, Central Division, wherein Rose Packard Shyvers is/are appellant and you are appellee to show cause, if any there be, why the decree, order or judgment in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Wm. P. James, United States District Judge for the Southern District of California, this 8th day of February, A. D. 1939, and of the Independence of the United States, the one hundred and sixty-third.

WM. P. JAMES,  
U. S. District Judge for the Southern District  
of California.

Service of a copy of the foregoing Citation is acknowledged this 8th day of February, 1939.

THORPE & BRIDGES,  
By ROANE THORPE,  
Attorney for Appellee.

[Endorsed]: Filed Feb. 9, 1939 [2]

No. 32930-J

To the Honorable Wm. P. James  
Paul J. McCormick,  
Geo. Cosgrave,  
Harry A. Hollzer,  
Leon R. Yankwich,  
Ralph E. Jenney  
Judges of the

District Court of the United States for the Southern  
District of California, Central Division.

DEBTOR'S PETITION

Debtor's Petition in the Proceedings Under Section  
75 of the Bankruptcy Act

The Petition of Rose Packard Shyvers,  
36A Kensington Park Road,  
Notting Hill Gate, London, W. 11,  
England.

Respectfully Represents: That she is primarily bona fide personally engaged in producing products of the soil (or that she is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations) as follows: The principal part of her income is derived from cash rentals and the proceeds of the sale of crop share rentals derived from the

so-called Packard Ranch, more particularly described in Schedule B(1) attached hereto; that such operations occur in the county (or counties) of Santa Barbara, within said judicial district; that she is insolvent (or unable to meet her debts as they mature); and that she desires to effect a composition or extension of time to pay her debts under Section 75 of the Bankruptcy Act.

That the schedule hereto annexed, marked "A", and verified by the oath of petitioner's attorney, contains a full and true statement of all her United States debts, and (so far as it is possible to ascertain) the names and places of residence of her [3] United States creditors, and such further statements concerning said debts as are required by the provisions of said act.

That the schedule hereto annexed, marked "B", and verified by the oath of petitioner's attorney, contains an accurate inventory of all her United States property, both real and personal, and such further statements concerning said property as are required by the provisions of said act.

That the petitioner at the present time is, and ever since some time in 1932 has been, actually in England.

That on or about the 27th day of September, 1938, petitioner's attorney prepared and sent to petitioner, via air mail, at her address in England, three copies of petition with attached schedules for her execution and return to this country, so that the petition

might be signed and verified by the petitioner herself; that petitioner's attorney is not familiar with and does *now* know petitioner's assets and liabilities in England or other places outside of the United States and petitioner was requested on transmission of such schedules for her execution and verification to supply therein all such information. That on or about the 11th day of October, 1938, petitioner's attorney received a cablegram from petitioner, who was at that time in Liverpool, England, advising that she had just received such schedules for execution and that there was some delay in their receipt by her in England because of her absence from London. That said cablegram advised the petitioner's attorney that petitioner was returning at once to London for the purpose of completing and executing said schedules and said attorney believes that said petition and schedules, duly executed by petitioner herself, will be received not later than October 25, 1938, and that as soon as they do arrive petitioner's attorney will file herein such petition and schedules, executed and verified by petitioner herself, as amended and supplemental petition and schedules herein. [4]

That petitioner's attorney is familiar with petitioner's assets and liabilities in the United States; that for many years he has represented her in this country under a general power of attorney.

Wherefore, your petitioner prays that her petition may be approved by the court and proceedings

had in accordance with the provisions of said section.

ROSE PACKARD SHYVERS,  
Petitioner.

By RAYMOND R. HAILS,  
Her Attorney and Her Attorney  
in Fact.

JOHN A. JORGENSEN  
RAYMOND R. HAILS,  
Attorneys for Petitioner.

### OATH TO PETITION

United States of America,  
Southern District of California,  
Central Division—ss.

State of California,  
County of Los Angeles—ss.

I, Raymond R. Hails, attorney for Rose Packard Shyvers, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

[Seal] RAYMOND R. HAILS.

Subscribed and sworn to before me this 15th day of October, 1938.

JESSIE L. MINER,  
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires January 25, 1940. [5]



SUMMARY OF DEBTS AND ASSETS

(From the Statements of the Bankrupt in Schedules A and B)

			Dollars	Cents
Schedule	A.....	1 (1)	Taxes and Debts due United States	0.00
"	A.....	1 (2)	Taxes due States, Counties, Districts and Municipalities .....	3,371.50
"	A.....	1 (3)	Wages .....	0.00
"	A.....	1 (4)	Other Debts preferred by law.....	0.00
"	A.....	2	Secured claims .....	197,857.45
"	A.....	3	Unsecured claims .....	11,885.41
"	A.....	4	Notes and bills which ought to be paid by other parties thereto.....	0.00
"	A.....	5	Accommodation paper .....	0.00
			Schedule A, total.....	213,114.36
Schedule	B.....	1	Real Estate .....	285,500.00
"	B.....	2-a	Cash on hand.....	3,096.81
"	B.....	2-b	Bills, promissory notes and securities	1,299.00
"	B.....	2-c	Stock in trade.....	0.00
"	B.....	2-d	Household goods, etc.....	0.00
"	B.....	2-e	Books, prints and pictures.....	0.00
"	B.....	2-f	Horses, cows and other animals.....	0.00
"	B.....	2-g	Carriages and other vehicles.....	0.00
"	B.....	2-h	Farming stock and implements.....	0.00
"	B.....	2-i	Shipping and shares in vessels.....	0.00
"	B.....	2-k	Machinery, tools, etc.....	3,000.00
"	B.....	2-l	Patents, copyrights and trade marks	0.00
"	B.....	2-m	Other personal property.....	0.00
"	B.....	3-a	Debts due on open account.....	0.00
"	B.....	3-b	Stocks, negotiable bonds, etc.....	2,122.41
"	B.....	3-c	Policies of insurance.....	0.00
"	B.....	3-d	Unliquidated claims .....	0.00
"	B.....	3-e	Deposits of money in banks and else- where .....	821.24
"	B.....	4	Property in reversion, remainder, trust, etc. ....	0.00
"	B.....	5	Property claimed to be exempt.....	0.00
"	B.....	6	Books, deeds and papers.....	0.00
			Schedule B. total.....	294,839.46

(Everything which Hails sets out in his Schedules A (1) thru A (5) is set forth, verbatim, by debtor in her same schedules hereinafter printed, and they are therefore omitted to save duplication. However, debtor in her Schedule A (2) adds certain statements with reference to "Security" after reciting in full what Hails set forth; and in her schedule A (3) debtor adds Mrs. Stella Elizalde as an unsecured creditor in the sum of \$200.00.)

ROSE PACKARD SHYVERS,

Petitioner.

By RAYMOND R. HAILS,

Her Attorney.

#### OATH TO SCHEDULE A

United States of America,  
Southern District of California,  
Central Division—ss.

On this 15th day of October, A. D. 1938, before me, personally came Raymond R. Hails, the person mentioned in and who subscribed to the foregoing schedule and who, being by me first duly sworn, did declare the said schedule to be a statement of all Petitioner's U. S. debts, in accordance with the Acts of Congress relating to Bankruptcy.

JESSIE L. MINER,

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires January 25, 1940. [11]

(Schedule B, by Hails, containing Statement of All Property by Bankrupt, being Schedules B (1)



thru B (6), are omitted to save duplication, as everything set forth by Hails is also set forth by debtor and is printed hereinafter, except: Hails gives "Cash on hand" under Personal Property as \$3096.81, while debtor gives it as \$1509.74 and debtor gives \$200.00 as value of "Household goods and furniture, household stores, wearing apparel and ornaments of the person" while Hails gives no value, and debtor gives value of "Books, prints, pictures" as \$25.00 while Hails gives no value; and in Schedule B (3) entitled "Choses in Action", Hails gives "Deposits of money in banking institutions and elsewhere as \$821.24, while debtor gives item as \$981.86; and in Schedule B (5), debtor, after reciting what Hails sets forth, adds a heading "Real Property in England (Farm Property)" together with all that appears thereafter under said Schedule.) [19]

ROSE PACKARD SHYVERS,

Petitioner.

By RAYMOND R. HAILS,

Her Attorney.

#### OATH TO SCHEDULE B

United States of America,  
Southern District of California,  
Central Division—ss.

On this 15th day of October, A. D. 1938, before me, personally came Raymond R. Hails, the person mentioned in and who subscribed to the foregoing schedule and who, being by me first duly sworn, did

declare the said schedule to be a statement of all Petitioner's U. S. estate, both real and personal, in accordance with the Acts of Congress relating to bankruptcy.

JESSIE L. MINER,

Notary Public in and for the County of Los Angeles, State of California.

Ordered filed Oct. 17-38.

R. E. J.

[Indorsed]: No. 32930-J Petition by Debtor with Schedules A and B filed Oct. 17, 1938. [20]

---

[Title of District Court and Cause.]

APPROVAL OF DEBTOR'S PETITION AND  
ORDER OF REFERENCE

(Under Section 75 Bankruptcy Act)

At Los Angeles, in said District, on October 17, 1938, before the said Court the petition of Rose Packard Shyvers that she desires to effect a composition or an extension of time to pay her debts, and such other relief as may be allowed under the Act of March 3, 1933, and within the true intent and meaning of all the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said petition is hereby approved accordingly.

It is thereupon ordered that said matter be referred to John Frame, Esq., one of the Conciliation Commissioners in bankruptcy of this Court, to take

such further proceedings therein as are required by said Acts; and that the said Rose Paekard Shyvers shall attend before said Conciliation Commissioner on October 24, 1938 and at such times as said Conciliation Commissioner shall designate, at his office in Solvang, California, and shall submit to such orders as may be made by said Conciliation Commissioner or by this Court relating to said matter.

Witness, the Honorable Ralph E. Jenney, Judge of said Court, and the seal thereof, at Los Angeles, in said District, on October 17, 1938.

[Seal]

R. S. ZIMMERMAN,  
Clerk.

By H. K. JACOBS,  
Deputy Clerk.

[Indorsed]: Filed Oct. 17, 1938. [21]

---

### DEBTOR'S PETITION

Debtor's Petition in the Proceedings Under Section  
75 of the Bankruptcy Act

To the Honorable Judge of the District Court of the  
United States for the Southern District of Cali-  
fornia, Central Division

The petition of (name in full) Rose Paekard Shyvers, (residence number) 36A Kensington Park Road of Notting Hill Gate, (street, city) London, W. 11 in the County of.....and District and State of England

Respectfully Represents: That she is primarily bona fide personally engaged in producing products

of the soil (or that he is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations) as follows: The principal part of her income is derived from cash rentals and the proceeds of the sale of crop share rentals derived from the so-called Packard Ranch, more particularly described in Schedule B (1) attached hereto; that such operations occur in the county (or counties) of Santa Barbara within said judicial district; that she is insolvent (or unable to meet her debts as they mature); and that she desires to effect a composition or extension of time to pay her debts under Section 75 of the Bankruptcy Act.

That the schedule hereto annexed, marked "A", and verified by your petitioner's oath, contains a full and true statement of all her debts, and (so far as it is possible to ascertain) the names and places of residence of her creditors, and such further statements concerning said debts as are required by the provisions of said act.

That the schedule hereto annexed, marked "B", and verified by your petitioner's oath, contains an accurate inventory of all her property, both real and personal, and such further statements concerning said property as are required by the provisions of said act.

Wherefore your petitioner prays that her petition may be approved by the court and proceedings had in accordance with the provisions of said section.

ROSE PACKARD SHYVERS,  
Petitioner.

RAYMOND R. HAILS and  
JOHN A. JORGENSON,

Attorneys for Petitioner.

(One shilling stamp.)

OATH TO PETITION

[Seal and Green Ribbon.]

Kingdom of England,  
City of London—ss.

I, Rose Packard Shyvers, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

ROSE PACKARD SHYVERS,  
Petitioner.

Subscribed and Sworn to before me this 17th day of October 1938.

ALBERT E. DEWEY,

(Official character) Notary Public.

Notary Public in and for the City of London, Kingdom of England. [22]

Great Britain and Northern Ireland,  
London, England.

Consulate General of the United States  
of America—ss.

I, Harry E. Carlson, Consul of the United States of America residing at London, England, do hereby make known and Certify to all whom it may concern that Albert Edward Dewey who hath signed the annexed certificate, is a notary public duly admitted and sworn and practising in the city of London, England and that to all acts by him so done full faith and credit are and ought to be given in Judicature and thereout.

In Testimony Whereof, I have hereunto set my hand and affixed my seal of Office at London aforesaid, this seventeenth day of October 1938 in the year of our Lord One Thousand Nine Hundred and thirty-eight.

[Seal and red ribbon] HARRY E. CARLSON,  
Consul of the United States of America at London,  
England.

Service No. 10385                      Fee \$2                      (Fee stamp)  
[23]

SUMMARY OF DEBTS AND ASSETS  
(From the Statements of the Bankrupt in  
Schedules A and B)  
(Not filled in by Debtor)

[24]



SCHEDULE A.

STATEMENT OF ALL DEBTS OF BANKRUPT  
Schedule A (1)

Statement of all Creditors who are to be paid in full or to whom priority is secured by law

(2) Taxes due and owing to the State of California or to any County, district or municipality thereof.

	Dollars	Cents
1938-39 General property taxes—Santa Barbara County—estimated .....	\$3,250.00	
1938-39 General property taxes—Carpinteria Sanitary District—estimated .....		16.00
1938-39 General property taxes—City of Santa Barbara, estimated .....		17.50
Delinquent taxes and penalties—Santa Barbara County, estimated .....		40.00
Delinquent taxes and penalties—City of Santa Barbara .....		48.00
Total.....	3,371.50	[25]

SCHEDULE A (2)  
Creditors Holding Securities

	Dollars	Cents
Security-First National Bank of Los Angeles, Santa Barbara Branch, Santa Barbara, California:		
Note dated June 15, 1934, secured by first deed of trust on real property hereinafter described and by collateral as hereinafter set forth:		
Principal amount .....	\$122,321.07	
Advances .....	1,654.18	
Accrued interest at 6% per annum to October 1, 1938.....	15,723.96	139,699.21

Note dated June 15, 1934, secured by second deed of trust on real property hereinafter described and by collateral as hereinafter set forth:

Principal amount .....	49,940.28	
Accrued interest at 6% per annum to October 1, 1938.....	8,099.96	58,040.24
<hr/>		
Foreclosure fees and expenses to August 29, 1938 .....		118.00

The real property covered by the deeds of trust securing said notes is described as follows:

Parcel 1.

All of Lot Four (4) as shown on the map of "Partition of Packard Goux Schiappapietra Tract, Carpinteria, Cal." filed June 16, 1897 with the report of the Commissioners in Action No. 2262 in the Superior Court of the State of California, in and for the County of Santa Barbara, entitled, Margaret Isabel Coyle, et al., Plaintiffs vs. Southern Pacific Railroad Company, et al., Defendants, described as follows:

Value \$5,000.00

Description omitted.

Parcel 2.

All that portion of the Rancho Jesus Maria, in the County of Santa Barbara, State of California, described as follows:

Value \$279,000.00

Description omitted.

The collateral held by said creditor as additional security for the payment of said notes is as follows:

792 shares of the common capital stock of Lompoc Orena Land Company, a California corporation, evidenced by certificate No. 1. Value \$792.00 Security. Miss Norah Mary Gibbs of "Etain" Gold Links Road Westward Ho! in the County of Devon, England. Mortgage dated 29th



March 1932 secured on real farm property hereinafter described and also on further real property not belonging to the Petitioner—

Principal amount .....	£3000	
Accrued interest at 6% per annum to October 1st 1938.....	£12	£3012.0

---

[26]

Schedule A (2)  
Continued

This property is also charged as collateral security to Stonsolie Investments Ltd., registered office 108a Cannon Street, London E. C. 4.

The real property in England covered by the above mentioned Mortgage is described as follows:

All those pieces of land and hereditaments situate in the Parish of Upminster in the County of Essex known as Vale Farm House and described by the numbers 148 part, 189, 190, 200, 202 and 203 on the Ordnance Sheet printed and published by the Director General of the Ordnance Survey Office, Southampton, England

Value £8375.

Security.

Mrs. Spooore, care of Messrs. Cave & Co.,  
20 Eastcheap  
London, E. C. 3

Mortgage dated 25th November 1929 secured on real farm property hereinafter described—

Principal amount .....	£4900.	
Accrued interest at 5% per annum to October 1st 1938.....	£86	£4986.

---

The real property in England covered by the above mentioned Mortgage is described as follows:

First all those pieces or parcels of land situate in the Parish of Upminster in the County of Essex England adjoining the road known as Bird Lane and being numbered 217 (Part) 218 (Part)



SCHEDULE A(5)  
Accommodation Paper

None.

.....Total

ROSE PACKARD SHYVERS,  
Petitioner.

OATH TO SCHEDULE A

Kingdom of England,  
City of London—ss.

On this seventeenth day of October, A. D. 1938, before me, personally came Rose Packard Shyvers the person mentioned in and who subscribed to the foregoing schedule and who, being by me first duly sworn, did declare the said schedule to be a statement of all her debts, in accordance with the Acts of Congress relating to Bankruptcy.

ALBERT E. DEWEY.

Notary Public in and for the City of London, Kingdom of England. [30]

SCHEDULE B

STATEMENT OF ALL PROPERTY BY BANKRUPT

Schedule B(1)

Real Estate

That certain real property in the County of Santa Barbara, State of California, particularly described as follows:

Parcel 1:

All of Lot Four (4) as shown on the map of "Partition of Packard Goux Schiappapietra Tract, Carpinteria, Cal." filed June 16, 1897 with the report of the Commissioners in Action No. 2262 in

the Superior Court of the State of California, in and for the County of Santa Barbara, entitled Margaret Isabel Coyle, et al. Plaintiffs vs. Southern Pacific Railroad Company, et al., Defendants, described as follows:

Beginning at a point in the northerly line of the strip of land allotted to the Southern Pacific Railroad Company by the Decree of Partition above mentioned, from which the southwest corner of Block "A" of the Town of Carpinteria, as shown on the plat thereof made by A. S. Cooper, recorded in the office of the County Recorder of said County, in Book 1 of Maps and Surveys, at Page 8-A, bears south 60° 21' east 60 feet, and running thence north 60° 21' west, along said northerly line, 22 chains; thence south 70° 30' east along county road 22.25 chains to the west line of Apple Street in said Town of Carpinteria; thence south 27° west along said line of Apple Street 4.10 chains to the point of beginning.

Value \$5,000.00

Parcel 2:

All that portion of the Rancho Jesus Maria, in the County of Santa Barbara, State of California, described as follows:

Value 279,000.00

(For metes and bounds description see Parcel 2 Schedule A(2), page 3-a)

Note\* Parcels 1 and 2 are subject to the two deeds of trust described in Schedule A(2), held by Security-First National Bank of Los Angeles, Notes and deeds of trust dated June 15, 1934—

Principal amount .....	\$172,261.35
Advances .....	1,654.18
Accrued interest to Oct. 1, 1938.....	23,823.92
Foreclosure fees and expenses to	
Aug. 29, 1938.....	118.00

\$197,857.45

Dollars Cents

Parcel 3:

Lot 9, Blk 97, City of Santa Barbara, Value 1,500.00

Subject to delinquent taxes as set forth in Schedule A(1).

[31]

Schedule B(2)  
Personal Property

A. Cash on hand—

Undeposited checks received from sale of crops. (In possession of Raymond R. Hails, 412 West. 6th St. Los Angeles, California)..... \$1,509.74

B. Bills of Exchange, promissory notes, or securities of any description, (each to be set out separately).

Four promissory notes executed by R. E. Bering in amount of \$300.00 each, payable April 5, 1937; May 5, 1937; June 5, 1937; July 5, 1937, respectively, interest at 6% per annum, payable at maturity:

Principal .....	\$1,200.00	
Accrued interest to October 5, 1938 .....	99.00	1,299.00

C. Stock in trade in.....business of .....at.....of the value of—None.

D. Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz:

All located in England (claimed as exempt under Schedule 5)..... 200.0

[32]

Schedule B(2) Continued  
Personal Property

E. Books, prints and pictures, viz:

All located in England (claimed as exempt in Schedule 5)..... \$25.0

- F. Horses, cows, sheep and other animals (with number of each), viz:—None.
- G. Carriages and other vehicles, viz:—None.
- H. Farming stock and implements of husbandry, viz:—None.

[33]

Schedule B(2) Continued  
Personal Property

- I. Shipping and shares in vessels, viz:—None.
- K. Machinery, fixtures, apparatus and tools used in business, with the place where each is situated, viz:  
Pumps, motors, pipe lines, surface pipe, wind-mills, etc., located on property described as Parcel 2 in Schedule B(1)..... \$3,000.00
- L. Patents, copyrights and trademarks, viz:—None.
- M. Goods or personal property of any other description, with the place where each is situated, viz:—None.

[34]

Schedule B(3)  
Choses in Action

- A. Debts due petitioner on open account.—None.
- B. Stock in incorporated companies, interest in joint stock companies, and negotiable bonds.  
88,891 shares of common stock Bear Creek Oil Co., a California corporation, (par value \$0.01 per share)..... 888.91  
10 shares of common stock Lompoc Oil and Development Company, a California corporation, (par value 10¢ per share)..... 1.00  
792 shares of common stock Lompoc Orena Land Co. (par value \$1.00 per share) a California corporation ..... 792.00

Dollars Cents

1 share common stock American Crystal Sugar Co., a New Jersey corporation (par value \$10.00) .....	10.00
1 share of common stock Union Sugar Company	
C. Policies of Insurance—None.	
D. Unliquidated Claims of every nature with their estimated value.—None.	
E. Deposits of money in banking institutions and elsewhere.	
Security-First National Bank of Los Angeles, Santa Barbara Branch.....	981.86
Total.....	3,104.27
	[35]

Schedule B (4)

Property in Reversion, Remainder or Expectancy, Including Property Held in Trust for the Debtor or Subject to Any Power or Right to Dispose of or to Charge.

PARTICULAR DESCRIPTION

General Interest

Interest in land—None.

Personal property—None.

Property in money, stocks, shares, bonds, annuities, etc.—None.

Rights and powers, legacies and bequests—None.

Total—None.

Property heretofore conveyed for the benefit of Creditors—None.

What portion of Debtor's property has been conveyed by deed of assignment, or otherwise for benefit of creditors; date of such deed, name and ad-



dress of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor—None.

What sum or sums have been paid to counsel, and to whom for services rendered or to be rendered in this Bankruptcy—None.

Amount realized from Proceeds of Property Conveyed—None. [36]

#### Schedule B (5)

A particular statement of the Property claimed as Exempt from the Acts of Congress relating to Bankruptcy, giving each item of Property and its valuation; and if any portion of it is Real Estate, its location, description and present use.

Military uniforms, arms and equipments.—None.

Property claimed to be exempt by State Laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption.

Wearing apparel, personal ornaments, etc.

#### (Schedule B(2)-D)

Section 690.2—Code of Civil Procedure  
Prints, pictures, etc.

#### (Schedule B(2)-E)

Section 690.2—Code of Civil Procedure  
Real Property in England (Farm Property)

All those pieces of land and hereditaments situate in the Parish of Upminster in the



County of Essex known as Vale Farm House and described by the numbers 148 part, 189, 190, 200, 202 and 203 on the Ordnance Sheet printed and published by the Director General of the Ordnance Survey Office, Southampton, England.—£8375.

This property is charged by way of Mortgage to Miss N. M. Gibbs for £3012 as mentioned in Schedule A(2).

First all those pieces or parcels of land situate in the Parish of Upminster in the County of Essex England adjoining the road known as Bird Lane and being numbered 217 (Part) 218 (Part) and 226 on the Ordnance Survey Map printed and published by the Director General of the Ordnance Survey Office, Southampton, England.

And Secondly all that piece or parcel of land situate in the said Parish of Upminster known as Great Socketts at the junction of Bird Lane aforesaid and the road from Hornchurch to Warley Essex aforesaid and containing in the whole  $7\frac{1}{2}$  acres or thereabouts.—£6625.0.

This property is charged by way of Mortgage to Mrs. Spoor for the amount of £4986 as mentioned in Schedule A(2). [37]

#### Schedule B (6)

Books, Papers, Deeds and Writings Relating to Bankrupt's Business and Estate.

The following is a true list of all books, papers, deeds and writings relating to my trade, business

dealings, estate and effects, or any part thereof, which at the date of this petition, are in my possession, or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit or advantage; and also of all others which have been heretofore, at any time, in my possession or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

#### Books

Books of account, bank statements, cancelled checks and other records pertaining to farming and other operations in the United States of America, are in possession of Raymond R. Hails, 412 West 6th St., Los Angeles, California—None.

#### Deeds

Deeds pertaining to properties in the United States are in possession of Raymond R. Hails, 412 West 6th St., Los Angeles, California—None.

#### Papers

All papers pertaining to farming and other operations in the United States of America are in possession of Raymond R. Hails, 412 West 6th St., Los Angeles, California—None.

ROSE PACKARD SHYVERS,

Petitioner.

## OATH TO SCHEDULE B

Kingdom of England,  
City of London—ss.

On this seventeenth day of October, A. D. 1938, before me, personally came Rose Packard Shyvers the person mentioned in and who subscribed to the foregoing schedule and who, being by me first duly sworn, did declare the said schedule to be a statement of all her estate, both real and personal, in accordance with the Acts of Congress relating to bankruptcy.

ALBERT E. DEWEY,

Notary Public in and for the City of London, Kingdom of England.

[Indorsed]: No. 32930-J Bkey Debtor's Petition with Schedules A and B filed Nov. 18, 1938. R. S. Zimmerman, Clerk, By M. J. Sommer, Deputy Clerk. [38]

---

[Title of District Court and Cause.]

NOTICE OF MOTION FOR DISMISSAL OF  
PROCEEDINGS

To Rose Packard Shyvers and to John A. Jorgenson, Esquire, her attorney:

You and each of you will please take notice that Security-First National Bank of Los Angeles, a national banking association, a secured creditor of the said Rose Packard Shyvers, Debtor in the above-entitled matter, will, by and through its attorneys, Messrs. Thorpe & Bridges, on Monday, the 23d day

of January, 1939, at the hour of 10 o'clock a. m. of said day, or as soon thereafter as counsel can be heard, in the courtroom of the Honorable William P. James, at Room 582, Pacific Electric Building, Los Angeles, California, make a motion for an order of dismissal of the above-entitled proceeding.

Said motion will be made upon the following ground:

That Debtor, Rose Packard Shyvers, is not personally bona fide engaged primarily in farming operations, and that the principal part of her income is not derived from farming operations, within the purview of Section 75, subdivision (r) of the Bankruptcy Act; that, therefore, the Court has no jurisdiction of this proceeding.

Said motion will be based on the testimony heretofore taken before John Frame, Conciliation Commissioner in the above-entitled matter, and testimony to be further adduced before this Court or said Conciliation Commissioner to whom the matter may be [39] referred for hearing and report by the above-entitled Court; upon the records, papers and instruments now on file in the above-entitled matter, and upon this Notice of Motion.

Dated at Los Angeles, California, this 6th day of January, 1939.

THORPE & BRIDGES,  
By ROANE THORPE,  
Attorneys for Security-First  
National Bank of Los An-  
geles, a national banking as-  
sociation.

## ORDER OF REFERENCE

Good cause appearing from the foregoing Notice of Motion;

It is therefore ordered that said motion be referred to John Frame, Conciliation Commissioner in the above-entitled matter, to take evidence in support of and against said motion, and after the taking of such evidence to file his findings and report herein, so that a hearing thereon may be held before this Court on the day set in said Notice of Motion, to-wit, Monday, January 23, 1939.

Dated this 6 day of January, 1939.

WM. P. JAMES,

Judge [40]

## POINTS AND AUTHORITIES

Point 1: A debtor who does not engage personally in the raising of products of the soil, does not live upon the land involved in the proceeding, and carries on no operation enumerated in sub-section (r) of Section 75 of the Bankruptcy Act, personally, is not a farmer within the meaning of said sub-section (r) of Section 75 of the Bankruptcy Act, and under such circumstances the Court has no jurisdiction under Section 75 of the Bankruptcy Act.

## Authorities:

In re Olson

21 Fed. Supp. 504

In re Davis

22 Fed. Supp. 12

Sub-section (r) of Section 75 of the Bankruptcy Act of the United States of America

[Indorsed]: (Served) Filed Jan. 9, 1939. [41]

---

United States District Court, Southern District of California, Central Division.

No. Bank. 32930-J

In the matter of

ROSE PACKARD SHYVERS,  
Debtor.

OPINION AND ORDER OF THE COURT

Petitioner brought this proceeding under the Farm Relief Act on October 17, 1938. She asserted in her petition that she was "bona fide personally" engaged in producing products of the soil and dairy farming, also poultry or livestock. This to formally conform to the qualification definition of the law. Among other debts, she owes in excess of \$139,699 to Security-First National Bank of Los Angeles under trust deed security form. Total indebtedness shown by her petition is \$197,857.45. Real property owned is given a value of \$285,500.00.



Some other debts are owing, and personal property possessed, which in general estimate, offset each other.

The creditor Security-First National Bank petitions to dismiss the proceeding on the ground that petitioner is not a "farmer."

Testimony was taken before the Conciliation Commissioner and returned to the court, where counsel for the respective parties presented their argument.

It appears that petitioner is the owner of property consisting in total of 9300 acres of land. She is a resident of London, England, where she has resided continuously since the year 1932. As a housewife she lives with her husband, whose occupation is that of ship broker and [43] builder. The ranch property originally belonged to her father, long since deceased, who had lived on the ranch. Petitioner purchased distributive shares of others of the family at about the time of the World War and has since been the owner of the ranch. She was on the property for a time but, as stated, has resided in England (always her permanent residence) since 1932. The ranch property has, in so far as its character permitted such use, been farmed by lessee tenants and dairymen. A comparatively small part has returned some income as oil producing. Apparently, it is hoped that its oil possibilities will enable disposition of it and return sufficient money to more than satisfy the debts. The latter consideration is not involved in the matter of the motion at hand, but would be present were a motion to dis-

miss on the ground that no probability of successful composition under the Farm Act appears.

The question now is, can a landowner, who neither resides on the land nor resides within the United States, be considered as being "personally engaged in farming" as the Act requires? I am of the opinion that the facts of the case do not warrant the allowing of the privilege to a non-resident, who leases out her property and remains wholly away from it. She does not even supervise the leasing; that is done by agents and attorneys employed to represent her in this country.

For these reasons, I think the motion of the creditor named should be granted. It is so ordered and an exception is noted in favor of the petitioner Rose Packard Shyvers.

Dated January 31, 1939.

WM. P. JAMES,  
U. S. District Judge.

[Indorsed]: Filed Jan. 31, 1939. [44]

---

[Title of District Court and Cause.]

NARRATIVE OF PROCEEDINGS HAD BEFORE CONCILIATION COMMISSIONER AND STIPULATION THEREON.

The first meeting of creditors pursuant to the filing of Debtor's petition herein and order thereon, was duly and regularly held before John Frame, Conciliation Commissioner, at the Santa Barbara



County Court House, Santa Barbara, California at 10:30 o'clock a. m. on Wednesday, December 14, 1938. H. W. Hart, an employee of the Security-First National Bank of Los Angeles, and Mr. Roane Thorpe, attorney for said bank, appeared on its behalf. Raymond R. Hails and John A. Jorgenson appeared as attorneys for Debtor.

Counsel for the bank filed with the Commissioner at said time a sworn statement of its claim against Debtor showing that at the time of the commencement of these proceedings there was due said bank from Debtor, and in default, a total sum of approximately \$200,000.00, represented largely by two promissory notes secured by two deeds of trust covering said ranch property, and true photostatic copies of said instruments were attached to said claim. Said claim was before the court at the time of the hearing of the motion and order from which the appeal herein is taken, and said verified claim by said bank shall be deemed to be before the court on appeal but need not be incorporated in the record to be prepared by the Clerk of the District Court and Transmitted to the Appellate Court, nor need the same be printed.

Upon the filing of such claim a discussion ensued between counsel for the bank, counsel for the Debtor, time. Counsel for the bank stated that he could not and the [45] Conciliation Commissioner in reference to agreeing upon some definite extension of consent to any definite extension without consulting his client, and for the purpose of affording such an opportunity and further discussion between such

counsel and counsel for Debtor, further proceedings before the Conciliation Commissioner were continued by stipulation and consent to Wednesday, January 11, 1939, at 10:30 a. m.

In the meantime, on January 6, 1939 counsel for said bank filed and served his Notice of Motion for Dismissal of Proceedings and Order of Reference Thereon, which appear in the record, and at such continued hearing at 10:30 a. m. on January 11, 1939 no further proceedings were had except the taking of the testimony of Raymond R. Hails, Attorney in Fact for Debtor, and Henry McGee, agent of Debtor.

The Commissioner thereupon caused the reporter to transcribe the proceedings had at both of said meetings and forwarded the same to the court, pursuant to such Order of Reference, and such transcripts were before the court on the hearing of said motion to dismiss. No further proceedings have been had before or taken by said Commissioner. The following is a narrative of such evidence. [46]

#### Narrative of Evidence

The transcripts of testimony taken before John Frame, Conciliation Commissioner, pursuant to the Order of Reference aforesaid, show that witnesses testified to the following facts (set out in this paragraph):

Petitioner is a resident of England; Raymond R. Hails is her attorney in fact; he obtained the first power in 1929 or 1930 and a second one in 1932.

He has been acting as her representative in this country under such powers. One Francis Price had preceded him as attorney in fact for petitioner. The ranch consists of approximately 9300 acres; approximately 650 to 750 acres are river-bottom land, most of which is under irrigation and the principal products from that portion of the ranch consist of alfalfa, sugar beets, mustard, beans, onions, some hay, but not much, and some grain. There are about 700 acres of what is called ocean front, land which slopes back from the ocean up to the mesa which is used part of the time for pasturage for a dairy, part of the time for raising hay and some smaller quantities of crops are grown thereon. There are approximately 200 or 300 acres of what is known as bench land which slopes back from the bottom-lands up to the mesa. This is mainly used for raising hay and for stock pasturage. In two canyons on the easterly end of the ranch there is a section of fifty acres of good farm land, not irrigated, on which beans, mustard and other crops are raised. There are other scattered parcels of bottom lands and bench lands which are farmed from time to time but not regularly. On the mesa there are perhaps three or four thousand acres of fairly level land in grasses which are used for pasturage only. The balance of the ranch is used for pasturage but is somewhat brush-covered, some parts quite heavily. The 650 or 700 acres of bottom-lands are customarily leased to two or three different tenants on a crop share basis. The tenant is required, except

in the case of beets, to deliver [47] the owner's share to a local warehouse but in the case of beets all are delivered to a beet dump of some sugar beet company which pays the tenant and owner separately. Mr. McGee attends to selling the petitioner's share and the proceeds are turned over to Mr. Hails. The alfalfa and grazing lands are rented on a cash basis and the proceeds are turned over by the tenants to Mr. McGee and by him to Mr. Hails. Two dairies are operated on the property, one by Singorelli Brothers at the easterly end of the ranch and their lease includes most of the mesa grazing lands and the alfalfa lands. Their lease includes some crop land which is not included in the cash rental. The other dairy is operated by a man named Dettamanti on the ocean front and he pays a cash rental. Mr. Hails deposits the monies received to petitioner's account. This ranch was originally owned by Albert Packard, father of petitioner. On his death, many years ago, it passed to his children who were petitioner, her brother, Will Packard, and three sisters, and thereupon Will Packard operated the ranch for the heirs up until his death in 1920 or 1921. During this period, after her father's death, petitioner purchased the interests of the other heirs and became the sole owner which she has been ever since. Will Packard resided on the ranch from 1892 to 1898 when he moved to the nearby town of Lompoc. Again he resided on the ranch between 1913 and 1916. When petitioner acquired the ranch

in 1921 or 1922, she was making her home in England where she resided with her husband. Every year since then she has come over to this country up to 1933. She stayed here from four to seven months each time, and, while here, she spent most of her time on the ranch. She had trees planted, irrigation wells dug, concrete lines laid, and was experimenting with different crops like artichokes, tobacco, asparagus, beans, beets, onions, and grain. She had windmills and buildings and outhouses repaired. McGee went on the ranch in 1916. He was a brother-in-law of Will Packard. Packard was farming the [48] part of the ranch that was under cultivation. McGee was his foreman, and they employed from twelve to fourteen men, and continued to farm in that way until December 1919, when Will Packard died. An administrator was appointed of his estate and said administrator appointed McGee manager of said ranch. At that time they leased to Union Sugar Company all the flat land planted to beets. They harvested the hay, hired the men, and sold it. After about July 1, 1920, they leased the beach front and all the mesa for a dairy and in 1921, when petitioner became the owner, she leased the bottom land to three different tenants and from that time to the present all the land has been leased to various tenants. McGee lived on the ranch from 1916 to 1924 when he moved into Lompoc which is situated about 8 miles from the ranch and he has resided in Lompoc ever since. There are five different sets of buildings on the



property an average of one mile apart. Since petitioner became the owner these buildings have been occupied by tenants or help. McGee has been resident manager for petitioner ever since she became the owner and still is. When petitioner came to this country her activity all centered about the ranch. She instructed McGee what was wanted done, and he followed her instructions. McGee picks out the tenants; he takes the matter up with Hails who draws the leases. He looks out for erosion on the river and sees to it that the farms hold the moisture by continuous cultivation before the crops are planted, and certain portions of the land are selected by him on which to plant beets or mustard. When the crop is planted and begins to grow, he sees to it that the weeds are kept down; sees to it that the beets are irrigated at the proper time. Proper irrigation is one of the most important things about a beet crop. Three or four days' delay in irrigation makes a big difference. He sees to it that the outhouses, barns, corrals, and fences are kept in repair and everything kept clean. When the crop is harvested, he sees to it that petitioner gets her proper share, not merely [49] in quantity, but quality. He sees to it that the crops are properly thrashed. The crops are hauled to a public warehouse and there cleaned, and he looks after that, and there petitioner's portion is set aside. He looks after the marketing of petitioner's share. He may let her share of the crops lie there a week or several weeks or months, and, when he thinks the

price is right, he disposes of it. He watches the markets closely. McGee devotes his whole time to this job. The tenants obey his instructions and the leases provide they shall; he keeps in touch with petitioner in England, by letter, as to what is going on when she is absent. McGee attends to making all arrangements with the government under agricultural laws. Petitioner owns the surface pipe used for irrigation and McGee sees to the proper distribution of the water among the tenants. He has never been in England and does not know of his own knowledge whether petitioner lives on a farm there. The gross production, in dollars, from the ranch from the foregoing operations since 1924, and the share received by petitioner, is as follows:

<b>Year</b>	<b>Gross Production</b>	<b>Petitioner's Share</b>
1924	\$68,112.50	\$20,223.50
1925	49,460.65	15,599.41
1926	49,109.59	17,133.20
1927	55,292.87	16,407.63
1928	103,924.25	20,490.13
1929	35,403.85	13,260.10
1930	50,967.38	11,662.03
1931	43,968.25	15,170.13
1932	26,729.27	5,573.47
1933	16,204.28	6,422.58
1934	21,669.01	6,637.58
1935	15,109.48	6,003.88
1936	13,861.78	5,764.32

In 1937 petitioner's gross income as her share from the land, amounted to \$8,944.62, which included \$2,301.75 oil rental. In 1938 petitioner's gross income from her share was \$6,370.27, but there are



approximately \$500 worth of crops belonging to her on the land not yet disposed of from that year. The taxes on the land have averaged around \$3,000 during the past six years, and for 1938-39 are approximately \$3,250. Mr. McGee, as resident [50] agent and superintendent has been receiving \$1800 a year as salary. The average expense for repairs is around \$150; the interest on the indebtedness to respondent bank is approximately \$10,000 per annum; insurance on the buildings amounts to about \$50 per annum and McGee's traveling expenses about \$50 a year. Hails has never received any salary. Petitioner has no other occupation than that of housewife. Her real estate in England is farm property. Hails has not discussed the situation with Debtor and it is merely hearsay. Her husband's principal occupation is ship-broker and builder in London. She has not been in the United States since early in 1933. Her principal income, in fact practically all of it, is derived from this ranch, and the foregoing operations. Mr. Hails as attorney in fact for Debtor does not operate or farm any of the Packard Ranch himself. Prior to 1932 Rose Packard Shyvers spent a great deal of time and activity in directing the ranch and investigating and experimenting with new crops. Since 1932, however, she has not been on the ranch herself, and, in fact, has been in England, where she had been making her permanent home since about 1922, and the ranch has been run by Mr. Hails and Mr. McGee. The whole ranch has been farmed by

tenants on either a cash rental basis or on a crop share basis since 1921, and, in addition, there are two dairies located on the ranch which pay a cash rental and also pay a crop share rental on crops they raise. Mr. McGee left the ranch in 1924 and has resided in Lompoc since that time. Mr. McGee has not heard from Rose Packard Shyvers for about six months. His duties as superintendent consist, among other things, of picking out the tenants and discussing them with Mr. Hails, who holds a power of attorney from Rose Packard Shyvers, and who draws the leases. There was no income from oil rentals in 1938, and no part of the ranch is producing any income from oil at the present time. Debtor has no income from property other than this ranch, in the United States. Debtor insisted at the hearing before Commissioner Frame aforesaid, and again [51] at the hearing of said motion before Judge James that, if the burden of proving Debtor was a farmer within the purview of the act, was on Debtor, a postponement should be had to take Debtor's deposition in England. Counsel for said Bank stated that such burden was on them.

### STIPULATION

It is hereby stipulated and agreed that the foregoing narrative of proceedings had before Conciliation Commissioner Frame is a true and correct statement of such proceedings and a true narrative of the evidence offered and received.

Dated: March 24, 1939.

JOHN A. JORGENSEN

RAYMOND R. HAILS

Attorneys for Debtor

ROANE THORPE

Attorneys for Security-First

National Bank of Los An-

geles

[Indorsed]: Filed Mar. 28, 1939. [52]

---

[Title of District Court and Cause.]

PETITION FOR APPEAL AND RESTRAIN-  
ING ORDER AND ORDER THEREON

To the District Court of the United States in and  
for the Southern District of California, Central  
Division:

The above named Rose Packard Shyvers, Debtor, now appears before this court, and complaining that she feels aggrieved by the order of this court, dated January 31, 1939, granting the motion of the Security-First National Bank of Los Angeles, a creditor, for a dismissal of this proceeding upon the ground that Debtor is not a farmer within the purview of Section 75 of the Bankruptcy Act, and that therefore this court has no jurisdiction, prays that this court allow an appeal therefrom to the United States Circuit Court of Appeals for the Ninth Circuit. This petition is accompanied by Debtor's Assignments of Error.

Said Debtor further prays that this court preserve the status quo until the final determination of the appeal, and that this court therefore grant Debtor an order restraining the Security-First National Bank of Los Angeles from proceeding with any sale, or proposed sale, of the real estate securing its claim under trust deeds until the final determination of said appeal.

Dated at Los Angeles, California this 8th day of February, 1939.

RAYMOND R. HAILS  
JOHN A. JORGENSON

Counsel for Debtor

[Indorsed]: Filed Feb. 8, 1939. [53]

---

### ORDER ON PETITION

The foregoing petition for appeal is hereby allowed upon Debtor filing a cost bond on appeal in the sum of \$250.00, and the petition for preservation of the status quo and restraining order pending determination of the appeal is allowed subject to the right of respondent to move to vacate the stay on sufficient showing.

Dated this 8th day of February, 1939.

WM. P. JAMES  
United States District Judge

[Indorsed]: Filed Feb. 8, 1939. [54]

[Title of District Court and Cause.]

### ASSIGNMENTS OF ERROR

Now comes the Debtor and in connection with her proposed appeal herein and petition for allowance of appeal, makes the following Assignments of Error:

#### I.

The court erred in granting the motion of the Security-First National Bank of Los Angeles for dismissal of this proceeding upon the alleged ground that Debtor is not a farmer within the purview of Section 75 of the Bankruptcy Act, and that therefore this court has no jurisdiction of this proceeding; and the court erred in ordering in connection with the granting of said motion the dismissal of this proceeding; Debtor claiming that the record effectually shows that Debtor is such farmer and that the court does have jurisdiction.

Dated at Los Angeles, California this 8th day of February, 1939.

RAYMOND R. HAILS

JOHN A. JORGENSON

Counsel for Debtor

[Indorsed]: Filed Feb. 8, 1939. [55]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the above named debtor, Rose Packard Shyvers, appeals to the United States Circuit Court of Appeals for the Ninth Circuit from that certain order of this court dated January 31, 1939, wherein and whereby it granted a motion of the Security-First National Bank of Los Angeles for dismissal of this proceeding upon the ground that said debtor was not a farmer within the purview of Section 75 of the Bankruptcy Act, and therefore this court had no jurisdiction to entertain this proceeding; and said debtor appeals from the whole of said order.

Dated at Los Angeles, California this 9th day of February, 1939.

RAYMOND R. HAILS

JOHN A. JORGENSEN

Counsel for Debtor

Copy mailed to Thorpe & Bridges, Attys. for Appellee, 2/9/39. E.L.S.

[Indorsed]: Filed Feb. 9, 1939. [57]

---

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men by These Presents:

That we, Rose Packard Shyvers, as principal and Henry McGee and Jessie L. Miner as sureties, are held and firmly bound unto the Security-First Na-



tional Bank of Los Angeles in the full and just sum of Two Hundred and Fifty Dollars (\$250.00) to be paid to said Security-First National Bank of Los Angeles, its certain attorney, executors, administrators, successors or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, by these presents.

Sealed with our seals and dated this 9th day of February in the year of our Lord One Thousand Nine Hundred and Thirty-nine.

Whereas, lately at the District Court of the United States for the Southern District of California, Central Division, in a proceeding depending in said Court, in which said Rose Packard Shyvers was the Debtor and Petitioner, and said Security-First National Bank of Los Angeles, a creditor, was Respondent, an order was made against said Rose Packard Shyvers on the 31st day of January, 1939, dismissing said proceeding, and the said Rose Packard Shyvers having obtained from said Court an order allowing an appeal to reverse said order in said proceeding, and a citation directed to the said Security-First National Bank of Los Angeles [58] citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco in the State of California on March 10, 1939;

Now, the condition of the above obligation is such that if the said Rose Packard Shyvers shall prosecute said appeal to effect and answer all costs if she fails to make said plea good, then the above obliga-



tion to be void; else to remain in full force and virtue.

Acknowledged before me the day and year first above written.

ROSE PACKARD SHYVERS

Principal

By RAYMOND R. HAILS

Her Attorney in Fact

HENRY MCGEE

Surety

JESSIE L. MINER

Surety

[Seal] FERDINAND CASTAGNOLA

Notary Public in and for the County of Los Angeles, State of California.

United States of America  
Southern District of California  
County of Los Angeles—ss.

Henry McGee and Jessie L. Miner, being duly sworn, each for himself or herself, deposes and says: That he or she is a free holder in said District and is worth the sum of Five Hundred Dollars (\$500.00) exclusive of property exempt from execution, [59] and over and above all debts and liabilities.

HENRY MCGEE

JESSIE L. MINER

Subscribed and sworn to before me this 9th day of February, 1939.

[Seal] FERDINAND CASTAGNOLA

Notary Public in and for the County of Los Angeles, State of California.

Form of bond and sufficiency of sureties approved.

WM. P. JAMES

Judge

[Indorsed]: Filed Feb. 9, 1939. [60]

---

[Title of District Court and Cause.]

ORDER CLARIFYING RESTRAINING ORDER MADE FEBRUARY 8, 1939, AND PERMITTING SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, A NATIONAL BANKING ASSOCIATION, TO COMPLETE ADVERTISING OF FORECLOSURE SALE UNDER DEEDS OF TRUST PENDING DETERMINATION OF APPEAL.

The motion of Security-First National Bank of Los Angeles, a national banking association, for an order clarifying an order heretofore made in the above-entitled matter, dated February 8, 1939, restraining the said Security-First National Bank of Los Angeles, a national banking association, from proceeding with a sale under either of the deeds of trust held by said Bank involved in these proceedings, and for a further order permitting said Security-First National Bank of Los Angeles, a national banking association, to complete its advertising of a sale under either of said deeds of trust, in accordance with law, pending the determination of the appeal in the above-entitled matter, came on duly and regularly for hearing before the Honorable William P. James, a Judge of the above-entitled

Court, in the Federal Building at Los Angeles, California, on Monday, the 13th day of March, 1939, John A. Jorgenson, Esquire, appearing as counsel for the debtor herein, and Roane Thorpe, Esquire, of Messrs. Thorpe & Bridges, appearing as counsel for Security-First National Bank of Los Angeles, a national banking association, and upon motion of the said Roane Thorpe, Esquire, and good cause appearing therefor;

It Is Hereby Ordered that the order made by this Court in [61] the above-entitled matter on the 8th day of February, 1939, restraining the Security-First National Bank of Los Angeles, a national banking association, from proceeding with any sale or proposed sale of the real estate covered by either of its deeds of trust until the final determination of the appeal herein, and preserving the status quo herein pending said appeal, be and the same is hereby clarified and amended so that the same shall not be interpreted as preventing and restraining, and the same shall not prevent or restrain said Security-First National Bank of Los Angeles, a national banking association, from proceeding to advertise and to complete the advertisement of a sale under either of said deeds of trust, in accordance with law, pending the determination of the appeal in the above-entitled matter.

It Is Hereby Further Ordered that Security-First National Bank of Los Angeles, a national banking association, be and it is hereby given permission to proceed forthwith to advertise a foreclosure sale under either of its deeds of trust covering the prop-

erty involved in this proceeding, in accordance with law, pending the determination of the appeal in the above-entitled matter.

It Is Hereby Further Ordered that, notwithstanding the permission in this order given to Security-First National Bank of Los Angeles, a national banking association, to advertise its proposed foreclosure sale of the property involved in this proceeding and covered by said deeds of trust, no sale of the whole or any part of said property shall be made by said Security-First National Bank of Los Angeles, a national banking association, or the Trustee named in said deeds of trust, pending the determination of the appeal in the above-entitled matter, and the date of any proposed sale set forth in any advertisement made under the terms and provisions of this order shall be postponed from time to time so that no sale shall take place thereunder until after the determination of [62] said appeal.

The deeds of trust referred to in this order are described as follows:

A deed of trust dated the 15th day of June, 1934, executed by Rose Packard Shyvers, also known as Rose Shyvers, as Trustor, to Los Angeles Trust & Safe Deposit Company, a California corporation, as Trustee for Security-First National Bank of Los Angeles, a national banking association, as Beneficiary, recorded on July 13, 1934, in Book 314 of Official Records, at Page 114, in the office of the County Recorder of Santa Barbara County, California.

A deed of trust dated the 15th day of June, 1934, executed by Rose Packard Shyvers, also known as Rose Shyvers, as Trustor, to Los Angeles Trust & Safe Deposit Company, a California corporation, as Trustee for Security-First National Bank of Los Angeles, a national banking association, as Beneficiary, recorded on July 13, 1934, in Book 312 of Official Records, at Page 147, in the office of the County Recorder of Santa Barbara County, California.

Dated at Los Angeles, California, this 15 day of March, 1939.

WM. P. JAMES

Judge of the United States  
District Court.

Received a copy of the within this 14th day of March, 1939.

J. A. J.

Attorney for debtor.

[Indorsed]: Filed Mar. 15, 1939. [63]

---

[Title of District Court and Cause.]

DEBTOR'S AMENDED DESIGNATION OF  
CONTENTS OF RECORD ON APPEAL

Now comes the debtor, Rose Packard Shyvers, by her attorneys, Raymond R. Hails and John A. Jorgenson, and for the purpose of designating the contents of the record on appeal herein pursuant to Rule 75 of "Rules of Civil Procedure for the Dis-



trict Courts of the United States", Section 36 of the new "General Orders in Bankruptcy", and related sections and laws, makes the following specifications for inclusion therein:

(1) Original petition of Rose Packard Shyvers, by her attorney, Raymond R. Hails, dated and filed in this court on or about October 15, 1938, together with those portions of the schedules attached thereto shown by the attached copy thereof. For the purpose of illustrating those portions which may be omitted we have crossed them out. Only those portions not so crossed out are to be included. Where portions are expressly indicated in the attached schedules as "Omitted", or other explanations are given, include such words or explanations though they do not appear on the original.

(2) Original Debtor's petition of Rose Packard Shyvers, dated on or about October 17, 1938, and filed in this court on or about the 18th day of November, 1938, together with those portions of the schedules attached thereto shown by the attached copy thereof. For the purpose of illustrating those portions which may be omitted we have crossed them out. Only those portions not so crossed out are to be included. Where portions are expressly [65] indicated in the attached schedules as "Omitted", or other explanations are given, include such words or explanations though they do not appear on the original.

(3) "Notice of Motion for Dismissal of Proceedings"; "Order of Reference"; and "Points and Au-

thorities'', constituting three sheets, filed in this court on or about the 6th day of January, 1939.

(4) Narrative statement of proceedings had before John Frame, Conciliation Commissioner, and narrative statement of evidence taken before said Commissioner pursuant to the Order of Reference aforesaid, to be given in the narrative form submitted herewith to which counsel have stipulated.

(5) Opinion and order of Hon. Wm. P. James, United States District Court Judge, dated January 31, 1939, and filed on or about that date.

(6) The Notice of Appeal with date of filing.

(7) The petition for and order allowing appeal; restraining order; and accompanying assignments of error, and cost bond.

(8) Order of the court allowing Debtor's petition and assignment thereof to Conciliation Commissioner.

(9) Citation on Appeal.

(10) Order modifying stay, dated March 15, 1939.

Dated this 24th day of March, 1939.

RAYMOND R. HAILS

JOHN A. JORGENSEN

Counsel for Debtor. [66]

[Indorsed]:

State of California

County of Los Angeles—ss.

John A. Jorgenson, being first duly sworn, deposes and says: that on March 25th, 1939, he served the



within Amended Designation on Roan Thorpe, attorney for Security-First Nat'l Bank by delivering to and leaving with him a true and correct copy thereof.

JOHN A. JORGENSEN

Subscribed and sworn to before me this March 28th, 1939.

[Seal]                      JESSIE L. MINER  
Notary Public in and for said County.

[Indorsed]: Filed Mar. 28, 1939. [67]

---

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing volume containing 69 pages, numbered from 1 to 69, inclusive, contains the original Citation and full, true and correct copies of debtor's Petition by her attorney; Approval of Debtor's Petition; Debtor's Petition; Notice of Motion for Dismissal of Proceedings and order of Reference thereon; Opinion of the Court; Narrative of Proceedings had before Conciliation Commissioner; Petition for Appeal; Order Allowing Appeal and Restraining Order; Assignments of Error; Notice of Appeal; Cost Bond on Appeal; Order Modifying Restraining Order; Amended Designation, and Order Extending Time to Docket Appeal, which constitute the record on appeal to the

United States Circuit Court of Appeals for the Ninth Circuit.

I Do Further Certify that the fees of the Clerk for comparing, correcting and certifying the foregoing record amount to \$9.05, and that said amount has been paid me by the Appellant herein.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the District Court of the United States for the Southern District of California, this 12th day of April, in the year of our Lord One Thousand Nine Hundred and Thirty-nine, and of the Independence of the United States the One Hundred and Sixty-third.

[Seal]

R. S. ZIMMERMAN,

Clerk of the District Court of  
the United States for the South-  
ern District of California,

By EDMUND L. SMITH

Chief Deputy Clerk.

---

[Indorsed]: No. 9153. United States Circuit Court of Appeals for the Ninth Circuit. Rose Packard Shyvers, Appellant, vs. The Security-First National Bank of Los Angeles, Appellee. Transcript of Record Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed April 13, 1939.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

United States Circuit Court of Appeals for the  
Ninth Circuit.

No. 9153

In the Matter of

ROSE PACKARD SHYVERS,

Debtor.

APPELLANT'S CONCISE STATEMENT OF  
POINTS AND DESIGNATION OF PARTS  
OF RECORD TO BE PRINTED.

Now comes Rose Packard Shyvers, the debtor, petitioner, and appellant herein and for the purpose of complying with Rule 19, Subdivision 6 of this Court, makes the following statement of points on which she intends to rely on appeal and designates the parts of the record which she thinks necessary for the consideration thereof:

I.

Appellant refers to the Assignments of Error found in the District Court Clerk's record transmitted on appeal, being page 55 thereof and states that such assignments present the points on which appellant intends to rely on the appeal.

II.

Appellant refers to her Amended Designation of Contents of Record on Appeal filed with the District Court herein, being pages 65 and 66 in such record transmitted by the District Clerk and states that the matters designated therein are the parts of the re-

ord which appellant thinks necessary for the consideration of the appeal and the parts therefore which appellant requests the Clerk of this Court to print as and for the printed transcript on appeal.

Dated this 12th day of April, 1939.

RAYMOND R. HAILS

JOHN A. JORGENSON

Counsel for Debtor and  
Appellant.

Received copy of the within Statement and Designation this 12 day of April, 1939.

THORPE & BRIDGES

Attorneys for Security-First  
National Bank of Los Angeles.

[Indorsed]: Filed Apr. 13, 1939. Paul P.  
O'Brien, Clerk.

